

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Empowering Broadband Consumers Through)	CG Docket No. 22-2
Transparency)	

COMMENTS OF USTELECOM – THE BROADBAND ASSOCIATION

I. INTRODUCTION AND SUMMARY

USTelecom – The Broadband Association¹ (USTelecom) respectfully submits these comments in response to the Federal Communications Commission’s (Commission) Notice of Proposed Rulemaking² seeking comment on the implementation of broadband labels as directed by Congress. USTelecom supports the consumer transparency objective of Congress and the Commission and provides the following comments to ensure the broadband consumer labels fulfil their purpose as a tool for broadband consumer comparison-shopping by being simple and clear.

In the Commission’s 2015 Order that first called for the development of broadband labels, the Commission said that the labels “should be clear and easy to read” to fulfill their purpose as resources that will “allow consumers to easily compare the services of different

¹ USTelecom is the nation’s leading trade association representing service providers and suppliers for the telecom industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse member base ranges from international large publicly traded communications corporations to local and regional companies and cooperatives, serving consumers and businesses in every corner of the country and world.

² *In the Matter of Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (Jan. 27, 2022) (*Label NPRM*).

providers.”³ This central objective should serve as a guiding principle for the implementation of the broadband labels. Accordingly, the Commission should leverage the prior safe harbor label model. Providers should be able to meet their disclosure requirements by providing a link to information housed electronically. With all existing offers available on a provider webpage, consumers would be able to easily access and compare the available offerings of different providers. Existing customers would gain no benefit by being inundated each month with labels for broadband plans they already have. A link to the provider’s Affordable Connectivity Program (ACP) landing page should be included on the webpage, informing consumers of the program without adding redundant length to every broadband label.

The Commission should seek to further preserve the simplicity of the broadband labels by only including that information that will give consumers meaningful insight into the broadband plans they are considering without including hypertechnical information that is meaningless to consumers and would overburden providers. Finally, the Commission should implement its plan to collect broadband-label data with provider-developed unique identifiers for plans with a legend of the identifiers. This will most effectively fulfil the Commission’s annual collection requirements without creating undue burden on providers or increasing administrative costs.

II. THE COMMISSION SHOULD BUILD OFF THE EXISTING TRANSPARENCY RULES IN IMPLEMENTING THE LABELS

The Commission’s transparency rules require providers to “publicly disclose accurate information regarding the . . . commercial terms of its broadband internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such

³ *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, 30 FCC Rcd 5601, 5680 (Mar. 12, 2015) (*2015 Order*).

services.”⁴ The Commission should allow providers to build off these existing rules in providing the broadband labels as the labels were previously deployed as a safe harbor for compliance with the enhanced transparency rules.⁵ Changing the labels from a safe harbor to a requirement should not otherwise alter how providers disclose the labels as the policies underlying the labels have not changed. Thus, providers should be permitted to disclose the labels “via a publicly available, easily accessible” link.⁶ Making labels available electronically allows consumers to see all applicable standard offerings in one place, the easiest route for consumers to comparison shop.

Additionally, the Commission should enact flexible rules for call centers and brick and mortar stores allowing providers to offer the broadband labels in various ways, such as by providing a link to the ISP’s website. To date, the Commission has declined to mandate that sales agents provide detailed disclosures or that hard copies of the labels be available in brick and mortar stores.⁷ The Commission should hew to that sound guidance instead of creating overly complicated rules as to the display location.⁸

⁴ 47 CFR §8.1(a).

⁵ See *2015 Order*, paras 178-79; *Label NPRM*, paras 6-7.

⁶ 47 CFR §8.1(a).

⁷ See *FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open Internet Transparency Rule*, Public Notice, DA 11-1148, at 3-4 (Jun. 30, 2011) (“we clarify that the [2010 Open Internet] Order does not compel the distribution of disclosure materials in hard copy or extensive training of sales employees to provide the disclosures themselves”).

⁸ *Label NPRM*, para. 26.

III. THE BROADBAND LABELS SHOULD PROVIDE CONSUMERS ACCESS TO EXISTING OFFERS IN A MANNER THAT WILL ENHANCE COMPARISON SHOPPING

The intent of the broadband labels is to enable consumers to comparison shop plans from a provider and its competitors.⁹ For this reason, providers should only be required to create labels for existing offers. Providing a broadband label for a legacy plan that is no longer being offered will create confusion and frustration for consumers and will not allow them to comparison shop between real offers. To the extent an existing customer would want to compare their current plan to what is otherwise available in the market, they have their billing information to use for comparison purposes.

Consistent with the 2016 Public Notice,¹⁰ promotional offers should be separately identified and accessible via a hyperlink. The overarching purpose of the broadband labels are to inform consumers of the pricing and service they can expect in the long term. Requiring the labels to include details on temporal offerings will make things unnecessarily complex and unclear for consumers. It would also require providers to continually update their labels as promotional offers change, burdening providers without any clear countervailing consumer benefit.

While updates to the labels will certainly be necessary when specific details of offered plans change, such as price, providers should not be required to notify existing customers anytime the label attached to their specific plan is updated. Beyond not being helpful for comparison shopping, sending updates of broadband labels would be unnecessary because

⁹ *Id.*

¹⁰ *Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, GN Docket No. 14-28, Public Notice, 31 FCC Rcd 3358 (CGB/WCB/WTB 2016) (2016 Public Notice).

providers already notify their customers of changes to rates or other terms and conditions. Requiring broadband providers to send existing customers broadband labels would intrude into the provider-customer relationship and would go beyond the transparency purposes of the broadband labels. For these same reasons, requiring providers to attach broadband labels to customers' bills is not warranted or contemplated by the Infrastructure Act.¹¹ Not only would monthly inundation of the label for a customers' current plan not enhance comparison shopping ability, it would also wastefully complicate customers' bills with an additional three to four pages of paperwork.

III. THE CONTENT OF THE BROADBAND LABELS SHOULD BE CLEAR AND SIMPLE FOR CONSUMERS TO UNDERSTAND

The Commission should tailor the labels “to meet . . . the basic information needs of consumers”¹² by requiring only information that is meaningful to consumers. When determining if specific information should be included on the broadband labels, the Commission should ask itself how much value the information provides to consumers in comparison shopping and weigh this against the cost of complexity that it might introduce to the label. The broadband labels should not be bogged down with too much technical information that would “overwhelm consumers with too much information” and provide no comparison-shopping benefit.¹³ The Commission has long prioritized ensuring that the labels are not “too detailed and technical to meet the needs of consumers”¹⁴ and should continue to do so to further the policy goal of the labels.

¹¹ *Labels NPRM*, para 26.

¹² *See 2015 Order*, para. 176.

¹³ *Id.*, para 17.

¹⁴ *Id.*, para 178.

Doing so will require some departure from the specifics of the 2016 Public Notice, but the Commission can do so while still adhering to its statutory mandate. The Infrastructure Act directs the Commission to establish regulations for the use of the labels “as described in” the 2016 Public Notice.¹⁵ This language does not require strict adherence to every aspect of the label as defined by the 2016 Public Notice. Indeed, Congress clearly contemplated some variation between the labels described in the 2016 Public Notice and the labels adopted through this proceeding given the Congressional direction to the Commission to hold hearings to assess how consumers evaluate broadband plans.¹⁶ The results of such hearings will undoubtedly affect the rules the Commission adopts.

Specifically, the Commission should adhere to its earlier decision that packet loss should not be included on the label.¹⁷ Including packet loss information would provide “little consumer benefit” as “consumers have little understanding of what packet loss means.”¹⁸ Indeed, packet loss is inversely related to latency, which is a much more important metric for consumers because that is what matters when assessing suitability for “real-time applications.”¹⁹ An effort to decrease packet loss could lead to an increase in latency, which would not benefit consumers. The Commission’s reasons for abolishing disclosure of this “esoteric metric” still stand today, as it is not a meaningful measure for consumers.²⁰

¹⁵ Infrastructure Act § 60504(a).

¹⁶ *Id.* at (c)(1).

¹⁷ See *In the Matter of Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, 33 FCC Rcd 311, 443 (Dec. 14, 2017) (*2017 Order*) (citing Notice of Office of Management and Budget Action OMB Control No. 3060-1220 (approved Dec. 15, 2016)), available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201612-3060-012.)

¹⁸ *Id.*

¹⁹ See *id.*, para 226.

²⁰ *Id.*, para. 226.

Moreover, the Commission should maintain its existing requirements for disclosing speed and latency.²¹ Specifically, the Commission should continue to permit fixed ISPs that participate in the Measuring Broadband America (MBA) program to disclose their speed and latency results as a sufficient barometer for performance customers can expect to experience.²² For fixed ISPs that do not participate in the MBA program, the Commission should continue to permit use of the methodology from the MBA program or actual performance based on internal testing or other relevant reliable data for disclosure of speed and latency.²³ As the Commission has already found, geographically specific disclosures do not provide high value to consumers but are unduly burdensome for providers.²⁴ Geographically specific disclosures would take significant effort to develop as providers would not be able to leverage their MBA program results or its established methodology.

The Commission should also maintain its current plan to allow monthly fees beyond equipment fees to be grouped together in a simple “Other Monthly Fees” listing.²⁵ Doing so would not only keep the labels simple, it would also favor uniformity, as providers may have varying monthly fee structures that, if individually listed, would diminish the consumer’s ability to compare offers between providers. Listing the fees individually would provide no more meaningful information than if the total cost of the monthly fees was provided.

The Commission should also not require providers to include information about ACP on every broadband label as the program is not specific to any offer and reference to it on every

²¹ 2017 Order, n. 818.

²² *Id.*

²³ *Id.*

²⁴ *Id.* para 225.

²⁵ *Id.*, para. 16.

label would be redundant. Moreover, the ACP benefit varies based on tribal status and stacking of federal and state Lifeline discounts. Including all of that information on a label would make it unwieldy and diminish readability. The better approach is for the Commission to require providers to offer general ACP information and notice on the webpage housing the broadband labels with a link to the provider's ACP webpage; for example, "you may qualify for free or reduced cost internet, click here to learn more." This way, the Commission would retain the benefit of informing consumers about ACP without lengthening every broadband label and diminishing the labels' values.

IV. THE COMMISSION SHOULD ALLOW PROVIDERS TO SUBMIT BROADBAND LABELS WITH THEIR OWN UNIQUE IDENTIFIERS

Finally, the Commission should proceed with its first suggested means of collecting broadband label data from providers by allowing providers to submit all broadband labels for plans provided each year with "a unique identifier" created by the provider and an accompanying legend.²⁶ For example, providers could use the same reference code they use internally for a specific offer. This option would reduce administrative burdens and costs for the Commission that would come with requiring providers to request a unique identifier every time they change their offerings. Requiring providers to create an Application Program Interface as described in the notice would be burdensome and costly for providers and would not be any more beneficial than allowing providers to submit labels with unique identifiers and a legend each year.

V. CONCLUSION

USTelecom supports the Commission in its implementation of broadband labels as required by Congress to ensure pricing transparency for consumers. By scrupulously selecting the information displayed on the broadband labels to be prominently displayed on provider

²⁶ *Label NPRM*, para. 25.

webpages, the Commission will create an effective tool for consumers to understand the broadband offerings of providers and to compare those offerings to ensure they select the broadband plan that is best for them.

Respectfully submitted,

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